

## REMARKS

### 35 U.S.C. 112

The Examiner rejected claims 1-13, 15, 51-55, 59-70, 83-85, 87 and 89 under 35 U.S.C. 112, first paragraph, as failing to comply with enablement and written description requirements. Without conceding the Examiner's position with respect to any of these claims,<sup>1</sup> Applicant has amended independent claims 1, 51, 59 and 83 and canceled dependent claim 84. Applicant contends that the rejections with respect to these claims are moot in view of these amendments.

Applicant notes that the examiner has not furnished any prior art rejections. Thus in order to advance prosecution and to avoid an inference that the examiner has conducted piecemeal prosecution, Applicant will address briefly how the claims as amended distinguish over the art of record.

Moreover, Applicant does not concede that the claims as originally filed were either anticipated or rendered obvious over the cited art. However, in order to advance prosecution Applicant has amended these claims.

### Claim 1

In the office action of July 22, 2008, the Examiner rejected Claims 1-8, 12, 15, 51-55, 59-68, 83-85, 87 and 89 under 35 U.S.C. 102(b) as being anticipated by Johnson (US Patent 6,955,187).

Applicant contends that claim 1, as amended, is patentable over Johnson.

Johnson fails to disclose or suggest "... a member that has a second shape, when no current is drawn from a battery, that causes the one of the first and second members to move and inhibit air from passing through an opening and into the battery."<sup>2</sup> In stark contrast, Johnson

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<sup>1</sup> See for instance Applicant's specification page 5, lines 16-17.

The battery 10 further includes an actuator 16 coupled to one of the first and second members, here the second cylinder 14 through an intermediate member 18.

<sup>2</sup> Support for this limitation is found in Applicant's specification at least at page 5, lines 19-25

The actuator 16 is configured with the battery such that when current is consumed from the battery the actuator causes the second cylinder to move relative to the first such that the openings in the first and second cylinders are in registration allowing air to pass into the battery. When current is not being drawn

requires current flow through a cell for an "OFF" actuator to bring slots out of register to occlude fluid flow into the cell. The functioning of the "OFF" actuator is initiated by changing a position of a load switch 48 which causes current from a cell 12 to flow through the "OFF" actuator wire<sup>3</sup>. Johnson clearly describes that a current flow through the cell 12 is required to initiate a transition from the ON state to the OFF state<sup>4</sup>:

Transition from the on to the off states is initiated by changing load switch 48 to the position shown in FIG. 9. Current flow is via the lines that are shown in wave form, that is from cell 12 through the load switch contact 58, then through contact 80 of "off" actuator wire 36 which begins to heat, then out through terminal 88 of wire 36, then through line 129 and control switch contact 109 across to blade contact 103, and then through the rod and line 123 back to the cell. When wire 36 is heated through its transition temperature it contracts and moves the inner sleeve down relative to the outer sleeve. Simultaneously, bistable beam 96 is buckled down past its neutral position to the stable down position shown in FIG. 7, bringing the slots out of register and occluding fluid flow into the cell. As the beam completes its downward movement the control switch is operated by rod 62 back to the position shown in FIG. 7 where the circuits to both actuator wires are opened. (emphasis added)

Therefore, Johnson fails to disclose or suggest each and every feature of independent claim 1, as amended. Applicant submits that Claim 1 is patentable for at least the foregoing reasons.

#### Claim 51

In a previous office action, the Examiner rejected claim 51 under 35 U.S.C. 102(b) as anticipated by Johnson. Applicant contends that claim 51, as amended, is patentable over Johnson.

Johnson fails to disclose or suggest a member causing one of a first cylindrical member and a second cylindrical member to return to a first position such that holes are not in registration inhibiting air to pass into a battery, when current is not drawn from the battery. As mentioned above with respect to claim 1, Johnson requires current drawn from a cell to flow through a second actuator in order to bring slots out of register to occlude fluid flow into the cell. The slots

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from the battery, the second cylinder moves relative to the first such that the openings in the first and second cylinders 12c and 14 are not in registration to inhibit or prevent air to pass into the battery

<sup>3</sup> Johnson, Fig. 9

<sup>4</sup> Id., Col. 5, line 61 – Col. 6, line 10

on members of Johnson do not go out of registration to a first position simply when current is not drawn from the battery. Therefore, claim 51, as amended, is patentable for at least similar reasons mentioned with respect to claim 1.

#### Claim 59

In a previous office action, the Examiner rejected claim 59 under 35 U.S.C. 102(b) as anticipated by Johnson. Applicant contends that claim 59, as amended, is patentable over Johnson.

Johnson fails to disclose or suggest a member to move the one of the first and second cylindrical members such that when current is not drawn from the battery, the holes in the first and second cylindrical members are not in registration to inhibit air to pass into the battery. Rather, as mentioned with respect to claim 1, Johnson specifically requires a current drawn from a cell to activate a second actuator that brings slots out of register to occlude fluid flow into the cell. Therefore claim 59 is patentable for at least similar reasons mentioned with respect to claim 1.

#### Claim 83

In a previous office action, the Examiner rejected claim 83 under 35 U.S.C. 102(b) as anticipated by Johnson. Applicant has amended claim 83 to recite a member that causes the first member to move inhibiting air from flowing through the hole into the battery when current is not drawn from the battery. Applicant contends that claim 59, as amended, is patentable over Johnson.

Johnson fails to disclose or suggest at least the foregoing feature of claim 83. As mentioned with respect to claim 1, Johnson specifically requires a current drawn from a cell to activate a second actuator in order to inhibit air from flowing through a hole into the cell. Therefore, claim 83 is patentable for at least similar reasons mentioned with respect to claim 1.

All dependent claims are patentable for at least the reasons for which the claims on which they depend are patentable.

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Respectfully submitted,

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